

REMARKS

Claims 1, 2, 4-7 and 10 currently are pending. By way of the present response, claims 1, 2 and 10 are amended to improve readability and more particularly point out and distinctly claim the subject matter of the invention. Additionally, claim 10 is amended to correct its dependency from claim 3 to claim 1. Reconsideration and allowance are respectfully requested in view of the above amendments and the following remarks.

On page 2 of the Office Action, claim 1 is rejected under 35 U.S.C. § 112, second paragraph, for having insufficient antecedent basis for the claim term “reinforcement element.” In response, the phrase “reinforcement element” in claim 1 is changed to “reinforcement member.” It is respectfully amended claim 1 fully complies with Section 112, second paragraph. Accordingly, Applicants request withdrawal of this rejection.

Starting on page 3, claims 1, 2, 4-7 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nichols (U.S. Patent No. 3,088,466) in view of Jones (U.S. Patent No. 4,278,081). Applicants respectfully submit, however, that this rejection should be withdrawn because the Nichols and Jones patents fail to teach, disclose, or suggest all the limitations recited in the amended claims.

More specifically, neither Nichols nor Jones teach or suggest the feature of amended independent claims 1 and 2 that recites that “the tubular member has a diameter greater than 20mm to allow an expansion of the pharynx.” Support for the amendment is found, for example, in lines 15 to 16 of page 47 of Applicants’ original specification. Rather, the Nichols and Jones patents relate to simple devices for securing an airway, whereas the present invention provides a device for guiding a surgical instrument into a digestive organ from the oral cavity through the pharynx. In this regard, the claimed invention patently distinguishes from the cited references.

Because the devices of Nichols and Jones are used in the trachea, the inner diameter of each of the devices of Nichols and Jones may be generally small, for example, 15 mm or less to only allow the air to pass. With the device having the inner diameter of 15 mm or less, it is difficult to insert a surgical instrument into a digestive organ. By contrast, the device of the present invention has a large diameter relative to the tracheal devices of Nichols and Jones, namely, 20 mm or more, because the device is used for inserting the surgical

instrument to allow the surgical instrument to reach the digestive organ, and the surgical instrument has to be operated with being inserted into the device.

The devices of Nichols and Jones, by contrast, are inserted into the trachea after the throat is cut open. Therefore, no strong tightening force occurs. By contrast, a supporting device consistent with claims 1 and 2 receives a strong tightening force from muscle around the pharynx with insertion of the device into the pharynx. In order to handle that problem, the supporting device includes a reinforcement member made of a thin plate and a diameter greater than 20 mm.

Moreover, claims 1 and 2 now recite first and second guiding members. Support for this feature is found, for example, in item 5 of Figure 1, page 11, lines 19-20, and page 19, starting at line 6 of the original application. Neither Nichols nor Jones describes first and second guiding members. The device of Nichols has a total of only two tubes and Jones appears to describe only one tube. By contrast, each of claims 1 and 2 recites that a supporting device includes a tubular member, a first guiding member and a second guiding member. A reason for having two guiding members is to gradually expand the pharynx to make it easier to insert the surgical instrument. Furthermore, by using the device consistent with the invention set forth in claims 1 and 2, it becomes possible to perform NOTES (Natural orifice transluminal endoscopic surgery).

For at least these reasons, independent claims 1 and 2 are believed to recite a combination of features not described or suggested by the applied Nichols and Jones patents. Claims 4-7 and 10 are allowable at least because each of these claims depends from allowable independent claim 1. Also, these dependent recite combinations including additional features not taught or suggested by the applied Nichols or Jones patents.

In view of the above amendments and the foregoing remarks, it is respectfully submitted that the application is in condition for allowance. Accordingly, it is respectfully requested that claims 1-2, 4-7, and 10 be allowed and the application be passed to issue without further delay.

If any issues remain that may be resolved by a telephone or facsimile communication with the Applicants' representative, the Examiner is invited to contact the undersigned at the numbers shown.

Further, while no fees are believed to be due, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-4525.

Respectfully submitted,

/John F. Guay, Reg. No. 47,248/
John F. Guay

Studebaker & Brackett PC
One Fountain Square
11911 Freedom Drive, Suite 750
Reston, Virginia 20190
(703) 390-9051 Main
(703) 390-1277 Fax